

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 10-18 and 56-89 are pending in the application, with claims 10, 56, 65, 74, 83, 85, 87, and 89 being the independent claims. Claims 74-82, 87, and 88 are sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 112

The Examiner has rejected claims 74-82, 87, and 88 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner argues that the language "[a] tangible memory storage device having instructions stored thereon" is not disclosed in the original Specification.

To further clarify the claimed subject matter, Applicants have amended claims 74-82, 87, and 88 to recite "a non-transitory computer-readable *storage medium* having instructions stored thereon." Support for this amendment is found, *inter alia*, at paragraphs [0043] and [0227]-[0230] of U.S. Application Publication No. 2004/0179659 ("Published Specification"). It is further noted that the language "storage media" as used in the Specification ("medium" being the well-known singular form of the word "media") clearly relates only to statutory subject matter (e.g., "[t]he logic code can be executed by

central processor unit 401 or is ***stored in storage media 406 or other non-volatile storage*** for later execution," Published Specification at [0230]).

Applicants note that the Examiner has failed to establish a *prima facie* case for the rejection, opting instead to simply state that the language was not disclosed without providing a response to Applicants' previous Reply. Nor does the Examiner provide a reason for changing stance from the interview of October 28, 2009, where the Examiner indicated that the amendments made would overcome the rejection under 35 U.S.C. § 112, first paragraph.

The Examiner is once again reminded that "[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement." (M.P.E.P. § 2163.02). The claim language that is the subject of this rejection, to the extent of any inclusion of subject matter, limitations, or terminology not present in the application as filed, does not involve "a departure from, addition to, or deletion from the disclosure of the application as filed." (M.P.E.P. § 2163.02).

It would therefore be clear to one skilled in the relevant art that the inventors had possession of the claimed invention at the time the application was filed upon reading, by way of example and not limitation, at least paragraphs [0043] and [0227]-[0230] of the instant Published Specification.

The Examiner is further reminded once again of the obligation to "take note of the applicant's argument and answer the substance of it." (M.P.E.P. § 707.07(f)). In this instance, the Examiner has failed to address any reason why support would not be found in paragraphs [0043] and [0227]-[0230] of the Published Specification, as argued at least at pages 17-19 of the Reply of November 11, 2009.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 74-82, 87, and 88 under 35 U.S.C. § 112, first paragraph.

Rejections under 35 U.S.C. § 103

Claims 10, 56, 65, 74, and 89

The Examiner has rejected claims 10, 56, 65, 74, and 89 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent Application No. 2005/0091056 to Surace et al. ("Surace") in view of U.S. Patent Application No. 2003/0005062 to Hachiya et al. ("Hachiya"). Applicants respectfully traverse.

1. The Examiner continues to fail to meet the obligation under M.P.E.P. § 707.07(f) to answer the substance of Applicants' arguments

In the Office Action, the Examiner repeats almost verbatim the rejection previously presented in the Final Office Action of September 15, 2009 ("September 2009 Final Office Action"). In the September 2009 Final Office Action, claims 10, 56, 65, 74, and 89 were rejected under 35 U.S.C. § 103(a) over Surace and Crawford. The rejection spanning pages 5 and 6 of the September 2009 Final Office Action, for example, is identical to the present rejection, except that the Examiner is now applying Hachiya instead of Crawford.

However, this application of Hachiya fails to address, at a minimum, the arguments provided on pages 26 and 27 the Reply dated November 11, 2009, and repeated herein, regarding "storing ... the individual character traits in a user profile having preference information for the user." Although the Examiner notes that "Applicant's arguments filed on 11/11/2009 Remarks have been fully considered but are

moot in view of the new ground(s) of rejection," the application of the Hachiya reference does not render Applicants' prior arguments moot, particularly with regard to the Surace reference, as the substance of these arguments still applies to the instant rejection.

The Examiner also *continues* to fail to address the arguments reiterated in the Reply dated November 11, 2009 and specifically brought to the Examiner's attention as arguments that were not addressed in the September 2009 Final Office Action.

The Examiner is further reminded once again of the obligation to "take note of the applicant's argument and answer the substance of it." (M.P.E.P. § 707.07(f)). In this instance, the Examiner has failed to address every argument pertaining to application of the Surace reference in the Reply dated November 11, 2009.

As previously argued, in rejecting claim 10, the Examiner cites to two different processes in Surace as allegedly teaching or suggesting "presenting an input interface to enable the user to specify individual character traits." The first process is concerned with the *implementation* of a voice user-interface, enabling an implementer (or developer) of the system to define a personality type, including such characteristics as "age, gender, education, employment history, and current employment position." (Surace at [0043]). The Examiner then conflates the *developer* of the Surace system with the *subscriber* of the Surace system, citing to the process whereby a subscriber is able to select "from several different personalities when selecting a virtual assistant" by "interview[ing] virtual assistants with different personalities." (Surace at [0013]).

It appears that the Examiner wishes to treat both the developer and the subscriber of the Surace system as the "user" of claim 10. The Examiner then takes this one step further, and argues that "storing, at a computing device, the individual character traits in

a user profile having preference information for the user" is also taught or suggested by Surace, arguing that the "user" of claim 10 is the "actor" of Surace. (Office Action, p. 5).

In order to support his argument that Surace teaches the features of claim 10 (except for the missing element allegedly taught by Hachiya), the Examiner has had to overload the term "user" to mean three separate entities (the developer, subscriber, and actor of Surace). These entities are entirely separate entities in the Surace system. In the invention encompassed by claim 10, it is clear that the same entity, the "user," is both the entity that specifies the individual character traits, and the entity associated with the "user profile" which additionally contains preference information for the user. Surace nowhere teaches or suggests a single entity that both specifies the individual character traits and is associated with the user profile. Surace instead allows only an implementer to define a personality type, not the user.

Under M.P.E.P. 2143.03, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." (M.P.E.P. 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 1385)). The Examiner fails to consider many of the words in the claim feature "storing ... the individual character traits in a user profile having preference information for the user". If the "user" associated with the "user profile" is in fact an "actor" in Surace, the Examiner does not consider what the actor's profile might be, nor what kind of preference information might be associated with an actor.

Paragraph [0145] of Surace is directed to selecting an actor based on their voice characteristics, and is not the same as "***storing ... the individual character traits in a user profile having preference information for the user.***"

Paragraph [0146] of Surace is directed to reading and recording the scripts by an actor, and is not the same as "*storing ... the individual character traits in a user profile having preference information for the user.*"

Paragraph [0147] of Surace is directed to the coaching of actors by a director, and is not the same as "*storing ... the individual character traits in a user profile having preference information for the user.*"

Paragraph [0149] of Surace is directed to selecting a specific prompt based on, for example, the "personality type of [the] voice user interface." However, as noted above, a subscriber of Surace never selects the individual "character traits" and rather is only able to select "from several different personalities when selecting a virtual assistant" by "interview[ing] virtual assistants with different personalities." (Surace at [0013]). This is not the same as "*storing ... the individual character traits in a user profile.*" Moreover, paragraph [0149] merely states that "[t]he selection of an appropriate specific prompt can be based on various factors," and says nothing of these factors being stored "in a user profile having preference information for the user." Accordingly, the disclosure of paragraph [0149] of Surace is not the same as "*storing ... the individual character traits in a user profile having preference information for the user.*"

It is therefore clear that in Surace there is no single entity which corresponds to the "user" of claim 10. Accordingly, Surace does not disclose or suggest at least "presenting an input interface to enable *the user* to specify individual character traits" and "storing ... the individual character traits in a *user profile* having preference information for *the user.*"

Moreover, the Examiner has failed to address the further arguments presented with regard to claim 56. There is no single entity in Surace which can be associated with

the login identifier of claim 56. Although an *implementer* (or developer) of the Surace system is able to define a personality type, including such characteristics as "age, gender, education, employment history, and current employment position," (Surace at [0043]) these characteristics are not received "from a communication device associated with a login identifier," as recited in claim 56. The implementer of the Surace system does not then likewise have a "profile corresponding to the login identifier" in which such characteristics are stored, as there is no indication that an implementer of the Surace system would have a login identifier for this purpose at all.

Moreover, Surace does not teach or suggest "receiving specified individual character traits from a communication device associated with a login identifier" where the *subscriber* is associated with the login identifier. Only the implementer of Surace is able to define a personality type. The subscriber of Surace never selects the individual "character traits." Rather, the subscriber is only able to select "from several different personalities when selecting a virtual assistant" by "interview[ing] virtual assistants with different personalities." (Surace at [0013]).

The Examiner's rejection demands that multiple entities in Surace act in concert to perform the method of claim 56. Therefore, it cannot be the case that Surace teaches or suggests a single "login identifier" as used throughout claim 56.

2. Surace does not teach, suggest, or disclose, "storing ... the individual character traits in a user profile having preference information for the user."

The arguments presented below were first presented in their current form in the Reply filed November 11, 2009. However, much of the substance has been argued over several prior replies, without any response from the Examiner on the record. For at least this reason, the Examiner continues to fail to meet the burden of establishing a *prima*

facie case of obviousness with regard to the rejected claims. As the burden for replying cannot properly shift to Applicants until such time as the Examiner does establish a *prima facie* ease, Applicants are unable to respond in a manner that would advance prosecution. The arguments, which remain valid and *fully* responsive to the instant Office Action, are reiterated below.

During the interview of October 28, 2009 regarding the September 2009 Final Office Action, the Examiner indicated that individual character traits are specified as shown in FIG. 3 and paragraphs [0042] and [0043] of Surace, to which Applicants do not acquiesce. As previously noted, this is all behavior performed at the implementation/development stage of a voice user interface. (Surace at [0038], "An Overview of an **Implementation** of a Computer-Implemented Voice User Interface with Personality").

Applicants noted during the interview that the developer of Surace is not a user in the sense of claim 10. The Examiner argued that a developer could be a user, and would therefore store character traits in some sort of profile, to which Applicants do not acquiesce. This rationale is incorrect for several reasons.

As clearly articulated in claim 10, "the individual character traits [are stored] in a user profile having preference information for the user." No such profile which would have any sort of preference information exists in Surace, either explicitly or implicitly. In fact, any individual character traits which are used in the development process to select a personality do not appear to be stored anywhere in Surace. Surace describes selecting a personality with a complete description including "age, gender, education, employment history, and current employment position." (Surace at [0043]).

However, Surace subsequently selects an actor at step 306 of FIG. 3, and then generates a dialog at step 308. This dialog is generated, and scripts written, based on the personality. (Surace at [0045]-[0046]). When the application is implemented, it is "based on the application requirements *and the dialog*," and not any "individual character traits." (Surace at [0047]).

Therefore, even if individual character traits are somewhere determined in the creation of a personality in Surace, nowhere are they explicitly or implicitly stored. All the voice user interface of Surace needs is the resulting dialog, and storing character traits would be extraneous and unnecessary. Moreover, this all happens during development/implementation of the Surace voice user interface, such that even if they were stored, *arguendo*, they would not be stored "in a user profile having preference information for the user," as recited in claim 10.

3. Hachiya does not supply the missing teaching or suggestion

Hachiya does not teach or suggest, nor does the Examiner rely on Hachiya to allegedly teach or suggest, any of the aforementioned features discussed with regard to Surace. Neither does the combination of Surace and Hachiya teach or suggest any of the above missing features. Instead, the Examiner relies on Hachiya to allegedly teach "behavior of the virtual host modified by user interaction history." (Office Action, p. 5).

Hachiya is directed to adjusting parameters of an agent "by the interaction with the post pet 103A performing the operation as determined by the agent parameters annexed to the E-mail." (Hachiya at [0164]). This functionality of Hachiya does not supply the missing teaching or suggestion for the myriad features identified above that are not present in Surace.

4. Conclusion

For at least the foregoing reasons, claims 10, 56, 65, 74, and 89 are not rendered obvious by the combination of Surace and Hachiya. Additionally, the Examiner is requested to consider and address every argument presented in this and the previous reply.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of 10, 56, 65, 74, and 89 under 35 U.S.C. § 103(a).

Claims 11-18, 57-64, 66-73, and 75-88

The Examiner has rejected claims 11-18, 57-64, 66-73, and 75-88 under 35 U.S.C. § 103(a) as allegedly being obvious over Surace in view of Hachiya, and further in view of:

1. **[Claims 11, 57, 66, and 75]** U.S. Patent No. 6,301,339 to Staples *et al.* ("Staples");
2. **[Claims 12, 58, 67, and 76]** U.S. Patent No. 5,189,702 to Sakurai *et al.* ("Sakurai");
3. **[Claims 13, 59, 68 and 77]** U.S. Patent No. 5,768,508 to Eikeland ("Eikeland");
4. **[Claims 14, 60, 69, and 78]** U.S. Patent No. 5,911,043 to Duffy *et al.* ("Duffy");
5. **[Claims 15, 61, 70 and 79]** U.S. Patent No. 6,366,882 to Bijl *et al.* ("Bijl"); and
6. **[Claims 16-18, 62-64, 71-73 and 80-82]** U.S. Patent No. 4,531,184 to Wigan *et al.* ("Wigan").

Applicants respectfully traverse these rejections. Staples, Sakurai, Eikeland, Duffy, Bijl, and Wigan do not overcome the deficiencies of Surace and Hachiya relative

to independent claims 10, 56, 65, and 74 described above. Claims 11-18 depend from claim 10; claims 57-64 depend from claim 56; claims 66-73 depend from claim 65; and claims 75-82 depend from claim 74. For at least these reasons, and further in view of their own features, claims 11-18, 57-64, 66-73, and 75-82 are patentable over Surace, Hachiya, Staples, Sakurai, Eikeland, Duffy, Bijl, and Wigan. Reconsideration and withdrawal of the rejections is therefore respectfully requested.

Claims 83-88 have been rejected under 35 U.S.C. § 103(a) as being allegedly obvious over Surace in view of Hachiya and U.S. Patent No. 4,964,077 to Eisen *et al.* ("Eisen"). Independent claim 83 recites, *inter alia*, "presenting an input interface to enable the user to specify personality information comprising one or more individual character traits" and "storing ... the individual character traits in a user profile including user interaction history information." Independent claim 85 recites, *inter alia*, "a receiving module configured to receive personality information comprising one or more individual character traits" and "a storing module configured to store the individual character traits in a profile that includes interaction history information within the memory." Independent claim 87 recites, *inter alia*, "receiving specified personality information comprising one or more individual character traits" and "storing the individual character traits in a profile having preference information."

As noted above with regard to independent claim 10, Surace and Hachiya do not teach or suggest the aforementioned features of independent claims 83, 85, and 87. Eisen does not teach or suggest, and is not used by the Examiner to teach or suggest, the missing feature. Accordingly, claims 83, 85, and 87 are patentable over Surace, Hachiya, and Eisen. Claims 84, 86, and 88 depend from claims 83, 85, and 87, respectively, and are also patentable over Surace, Hachiya, and Eisen for at least the

Reply to Office Action of January 20, 2010

BYRNE *et al.*
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same reasons as claims 83, 85, and 87, and further in view of their own respective features. Reconsideration and withdrawal of the rejections is therefore respectfully requested.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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